
ACTIVE EFFORTS

The Indian Child Welfare Act (ICWA) and Michigan Indian Family Preservation Act (MIFPA) the state to make “active efforts” in every ICWA/MIFPA case to:

- Provide services to the family to prevent removal of an Indian child from his or her parent(s) or Indian custodian(s).
- Reunify an Indian child with his or her parent(s) or Indian custodian(s) after removal.

States are required to provide active efforts to families, and the court determines whether active efforts have been made.

Active efforts are more intensive than “reasonable efforts” and require the worker to thoroughly assist the family in accessing and participating in necessary services that are culturally appropriate and remedial and rehabilitative in nature; see MCL 712B.3(a)(i-xii).

Example: Reasonable efforts might be the worker making a referral for services and attempts to engage the family in services, but active efforts might be the worker consulting with the tribe regarding case planning, making a referral to services, attempts to engage the family in services and providing transportation to the services.

Note: The federal guidelines and MIFPA definition for active efforts apply regardless of whether or not the child’s tribe is involved in the custody proceedings.

The following tribes have posted their regulations or statutes (which may include definitions for active efforts) online:

- Bay Mills Indian Community (see www.baymills.org, select Bay Mills Tribal Court > Tribal Code).
- Grand Traverse Band of Ottawa and Chippewa Indians (see www.gtbindians.org for the Web site, the Tribal Code is found in the National Indian Law Library at www.narf.org/nill/Codes/gtcode/index.htm).
- Little River Band of Ottawa Indians (see www.lrboi.com; the tribal code is found in the National Indian Law Library at www.narf.org/nill/Codes/lrcode/lrcodetoc.htm).

- Little Traverse Bay Band of Odawa Indians (see www.ltbodawa-nsn.gov, select Odawa Register > Tribal Code).
- Pokagon Band of Potawatomi Indians (see www.pokagon.com, select Tribal Government > Child Protection Code).
- Saginaw Chippewa Indian Tribe (see www.sagchip.org for the tribal Web site).
- Sault Tribe of Chippewa Indians (see www.saulttribe.com, select Tribal Code).

If a tribe's "active efforts" regulations are not available online, the worker should attempt to obtain them by contacting the child's tribe and document the contact.

Examples of active efforts include (but are not limited to):

- Making appointments on behalf of the client with the client's consent and agreement.
- Providing transportation to and from appointments.
- Closely monitoring client(s)' participation in such services.
- Make ongoing efforts to secure a placement in accordance with ICWA Placement Preferences [25 USC 1912(d)].

The worker must attempt to use tribal resources¹ in providing services to the Indian family, including:

- Tribal social services.
- Individual Indian caregivers.
- Medicine men.
- Elders.
- Other tribal leaders.

See BIA Guidelines 80 Federal Register 10146-10159 (2015).

See PSM 714-2, CPS Supportive Services.

See PSM 715-2, Removal and Placement of Children.

¹ Indian Child Welfare Glossary and Flowchart, National Indian Child Welfare Association (NICWA), at 4, available at: http://www.nicwa.org/Indian_Child_Welfare_Act/glossary.pdf.

**ADOPTIVE
PLACEMENT**

The permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption [25 USC 1903(1)(iv)].

See the Adoption Services manual (ADM) for more information.

AMERICAN INDIAN

A person who is an enrolled member (or eligible for enrollment) of a United States federally recognized Indian tribe.

ANONYMITY

Jones, BJ, The Indian Child Welfare Act Handbook, American Bar Association, 1995, at 40.

BENEFICIARY

A beneficiary² in the broadest sense is a natural person or other legal entity who receives money or other benefits from a benefactor.

The beneficiary for Indian child welfare cases, based upon Federal-Indian Trust Relationships, can be simultaneously the Indian child, Indian family, and Indian tribe according to their function or situation.

**BEST INTERESTS
OF THE INDIAN
CHILD**

The best interests of the Indian child means the best interests of the child's tribe, and the implementation of the policies and placement preferences set forth in the Indian Child Welfare Act (ICWA). Meeting the best interests of the Indian child requires recognition of the importance of maintaining connections with family, siblings, extended family, the tribe, and the child's cultural heritage, and requires knowledge and understanding of the damage caused by loss of identity for Indian children (25 USC 1902).

² Wikipedia, the free dictionary at: <http://en.wikipedia.org/wiki/Beneficiary>.

**CHILD CUSTODY
PROCEEDING**

Initiation of legal action involving an Indian child regardless of whether the child previously lived in an Indian cultural environment or with an Indian parent that includes:

- A child protective proceeding.
- A court-ordered foster care placement.
- Termination of parental rights.
- A pre-adoptive placement.
- An adoptive placement.
- Child custody proceedings for children who commit status offenses (offenses that can only be committed by minors).
- A delinquency proceeding that results in the termination of parental rights.
- A guardianship placement (Juvenile and Estates and Protected Individuals Code [EPIC]).
- An Inter-state Compact for the Placement of Children (ICPC) placement.
- A Safe Delivery Act placement.

Child custody proceeding does not mean:

- Placement of a child based upon an act, which, if committed by an adult, would be a crime. 25 USC § 1903(1).
- Placement of a child based upon an award of custody to one of the parent(s) in a divorce proceeding. 25 USC § 1903(1).
- Voluntary placement by a parent with no court involvement.
- Power of Attorney allowing someone else to temporarily care for child (up to 180 days no legal action).

**CHILDREN'S
SERVICES CASE**

Information concerning a child(ren) who is receiving the following services:

- Children's protective services.
- Children's foster care.
- Adoption.
- Juvenile justice.
- Guardianship (Juvenile and Estates and Protected Individuals Code [EPIC]).
- Reunification services.
- Post-adoption services.

**CLEAR AND
CONVINCING
EVIDENCE**

Clear and convincing is the level of evidence necessary for the court to remove an Indian child from his or her parent(s) under ICWA (25 USC 1912(e)). Clear and convincing evidence is a higher standard of proof than the level necessary to remove a non-Indian child from his or her parent(s) under Michigan law.

To be clear and convincing, the evidence must show the existence of particular conditions in the home that are likely to result in serious emotional or physical damage to the particular child who is the subject of the proceeding. The evidence must show the causal relationship between the conditions that exist and the damage that is likely to result."

**CULTURALLY
APPROPRIATE
SERVICES**

Services that will support and recognize the cultural customs of parent(s) and/or a child, see Michigan Indian Family Preservation Act MCL 712B.3(d).

**DILIGENT
PLACEMENT
SEARCH**

If it exists, there must be documented contact with the Indian child's tribal social service program, a search of county or state listings of available Indian homes, and contact with local, regional and nation-

ally known Indian programs that have placement resources available for Indian children.

DOMICILE

A person's true, permanent home, or the place to which he/she intends to return even though actually residing elsewhere. A domicile is not always the same as a residence. A person can reside in one place but be domiciled in another.

For adults, domicile is established by their physical presence in a place with an intent to remain there. A minor's domicile is determined by that of the custodial parent. On occasion, a child's domicile will be in a place where the child has never resided. When there is a question, the Supreme Court accepts the Indian mother's domicile first; then the Indian father's domicile, as the Indian child's domicile.

EVIDENCE BEYOND A REASONABLE DOUBT

The level of evidence necessary to terminate parental rights of the parent of an Indian child under ICWA.

Evidence beyond a reasonable doubt is a higher burden of proof than the level necessary to terminate parental rights of the parent of a non-Indian child.

EXTENDED FAMILY MEMBER

As defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece, nephew, first or second cousin, or stepparent.

FEDERAL RECOGNITION

Federal tribal recognition grants to tribes the right to certain benefits, and is largely controlled by the United States federal agency, the Bureau of Indian Affairs. Federally recognized tribes are those Indian tribes recognized by the United States Bureau of Indian Affairs for certain federal government purposes. Currently,

there are 12 federally recognized Indian tribes in the Michigan, and approximately 566 in the United States.

FIRST NATIONS

A term of ethnicity that refers to Aboriginal peoples in Canada who are neither Inuit nor Metis people.

FOSTER CARE PLACEMENT

A legal action removing an Indian child from the parent(s) or Indian custodian(s) for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated. This includes legal guardianship because the parents may not be able to have the Indian child returned upon demand.

INDIAN

For the purposes of Indian child welfare, an Indian is defined as any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in section 1606 of Title 43, 25 USC 1903(3) of the Alaska Native Claims Settlement Act (85 Stat. 688, 689), or is of tribal descent and is so recognized by an Indian tribe, the Bureau of Indian Affairs or the Department of Indian and Northern Development of Canada.

INDIAN CHILD

An unmarried person who is under age eighteen and is either:

- A member of a federal recognized Indian tribe.
- Eligible for membership in an Indian tribe.

INDIAN CHILD'S TRIBE

The federal recognized Indian tribe in which an Indian child is a member, eligible for membership, or in the case of an Indian child who is a member of, or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts.

**INDIAN CHILD
WELFARE ACT
(ICWA)**

An act by the United States Congress providing laws for states regarding child custody and placement of Indian children in child welfare cases.

INDIAN COMMUNITY

A group of people living in close proximity to one another who share common interests, beliefs, values, and views, in which the majority of the people are Indian.

INDIAN CUSTODIAN

An Indian person who has custody of an Indian child under tribal law or custom, or under state law, or to whom temporary physical care, custody, and control has been voluntarily transferred by the parent of such child.

INDIAN FAMILY

A group of people related to one another through ancestry or marriage, residing in the same household, in which one or more persons in the household self declares as having Indian ancestry.

**INDIAN FOSTER
HOME**

Defined by the child's tribe; or, if no tribal definition exists, a child's:

- Foster home licensed by an Indian tribe.
- Foster home, licensed by the department or a tribe and specified as an appropriate home for this child by the tribe.
- Home, licensed by the department or a tribe, in which one or both of the primary caregivers are members of an Indian tribe.
- Unlicensed relative placement where the relatives are members of an Indian tribe.

INDIAN TRIBE

Any Indian tribe, band, nation or other organized group or community of Indians recognized as eligible for the services provided to Indians, including any Alaska Native village as defined in Section 3(c) of the Alaska Native Claims Settlement Act (85 Stat. 688, 689), as amended, *or other recognized group or community which is so recognized as an Indian tribe by any state commission, agency, or authority which has the statutory power to extend such recognition.*

INUIT

A general term for a group of culturally similar indigenous peoples inhabiting the Arctic regions of Alaska, Greenland, and Canada³.

**INVOLUNTARY
PROCEEDING**

Any legal action where a child is removed from a parent/Indian custodian and such parent/Indian custodian cannot have the child returned upon demand.

LEGAL FATHER

A male, defined by law, with recognized legal rights associated with a child or child(ren). *Michigan Court Rule (MCR) 3.903(a)(7)* defines *father* as a man⁴:

- a. A man who is married to the child's mother at any time from the child's conception to the child's birth.
- b. A man who legally adopts the child.
- c. A man who has been determined to be the child's legal father in an order of filiation or judgment of paternity.
- d. A man judicially determined to have parental rights.
- e. A man whose paternity is established by the completion and filing of an acknowledgment of parentage in accordance with the provisions of the Acknowledgment of Parentage Act.

³ Wikipedia, the free dictionary at: <http://en.wikipedia.org/wiki/Inuit>

⁴ Michigan Absent Parent Protocol: Identifying, Locating, and Notifying Absent Parents in Child Protective Proceedings at: <http://courts.michigan.gov/scao/resources/standards/APP.pdf>

METIS

A Métis⁵ is a person born to parents who belong to different groups defined by visible physical differences, regarded as racial, or the descendant of such persons. In Canada, the term usually designates a constitutionally recognized individual born of an Aboriginal group descended primarily from the marriages of Scottish and French men to Cree, Saulteaux, and Ojibwa women in southern Rupert's Land starting in the late 17th century, and the marriages of French women to Ojibway men starting in Quebec in the middle 17th century.

**MICHIGAN STATE
HISTORIC TRIBES**

Indian communities in Michigan that have not received federal recognition by the United States⁶.

The state historic tribes⁷ are:

Burt Lake Band of Ottawa and Chippewa Indians

6461 E. Brutus Road

P.O. Box 206

Brutus, MI 49716

(231) 529-6113

Grand River Bands of Ottawa Indians

P.O. Box 2937

Grand Rapids, MI 49501-2937

(616) 458-8759

⁵ Wikipedia, the free dictionary at: <http://en.wikipedia.org/wiki/M%C3%A9tis>

⁶ Wikipedia, the free dictionary at: http://en.wikipedia.org/wiki/State_recognized_tribes

⁷ Department of Civil Rights public Web site at:

http://michigan.gov/documents/mdcr/2012_2013_MichiganIndianDirectoryfinal_377530_7.pdf

NATIVE AMERICAN

A term used to describe indigenous people of the American continents which has several different common meanings and scope, according to regional use and context⁸.

**NATIVE AMERICAN
AFFAIRS DIRECTOR**

A Department of Health and Human Services staff member(s) who:

- Assures the department's child, adult and family services policy is in compliance with the Indian Child Welfare Act (ICWA)/Michigan Indian Family Preservation Act (MIFPA) and Indian law.
- Investigates complaints of noncompliance from tribes.
- Provides consultation to department and private agency foster care (PAFC) staff relating to Indian law and administrative rules.
- Provides ICWA/MIFPA materials and training.
- Acts as the tribal liaison between tribes and urban Indian organizations and the department for Indian child welfare and related services.
- Provides tribal consultation with federally recognized Indian tribes.

PARENT

A biological parent(s) of an Indian child or a person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established under tribal law, tribal custom, or under state law.

PERMANENCY

A child's placement that lasts long enough and is comfortable enough for the child to have a sense of belonging; "belonging-ness."

⁸ Wikipedia, the free dictionary at: http://en.wikipedia.org/wiki/Native_Americans

PRE-ADOPTIVE PLACEMENT

The temporary placement of an Indian child in a foster home or institution after termination of parental rights, but prior to or in lieu of adoptive placement.

PUTATIVE FATHER

The alleged biological father of a child. A putative father can only exist where a child has no legal father.

Note: While ICWA does not define the putative father, staff should follow Michigan law regarding putative fathers.

QUALIFIED EXPERT WITNESS

- A member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organizations and child-rearing practices.
- A lay expert witness having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and child rearing practices within the Indian child's tribe.
- An Indian Outreach Worker (IOW) may be considered a qualified expert witness if the department receives written approval from the child's tribe approving the IOW as a qualified expert witness.

Note: See Michigan Indian Family Preservation Act MCL 712B.17(1)(a-b).

REMEDIAL SERVICES

Services designed to remedy the circumstances, which caused or may cause placement or continued placement of the Indian child outside the home⁹.

⁹ Jones, BJ, *The Indian Child Welfare Act Handbook*. American Bar Association, 1995, at 58.

RESERVATION

Indian country as defined in Section 1151 of Title 18, United States Code and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual, or held by any Indian tribe or individual subject to a restriction by the United States against alienation.

SECRETARY

The United States Secretary of the Interior.

STATUS OFFENSE

A child's violation of the juvenile code by the commission of an act that would not be illegal if committed by an adult, but that indicates that the child is beyond parental control. Examples include running away from home, truancy and incorrigibility [see NAA 500, Juvenile Justice for Indian Child(ren)].

**TERMINATION OF
PARENTAL RIGHTS**

Any action, including a voluntary legal proceeding, which may result in the termination of the parent-child relationship or the permanent removal of the child from the parent's custody.

TRIBAL COURT

A court with jurisdiction over child custody proceedings and which is either a court of Indian offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

**TRIBAL
INTERVENTION**

Tribal intervention in a child *custody* case occurs when a tribe acts on its right to participate in a child custody *proceeding*. The *Indian Child Welfare Act* states "in any State court proceeding for the *foster care placement* of, or *termination of parental rights* to, an *Indian child*, the *Indian custodian* of the *child* and the *Indian child's* tribe shall have a right to intervene at any point in the proceeding [italics added]."

This intervention can be broadly interpreted: the tribe may request to transfer the case to tribal court (a “transfer of jurisdiction”) or the tribe may choose to only monitor the case through court records. Transfer of jurisdiction can be requested by either the parent or the tribe. A tribe may intervene at any point in an Indian child custody proceeding¹⁰.

TRIBAL MEMBERSHIP

Defined by each tribe and is not necessarily based on blood quantum¹¹.

TRUSTEE

A trustee¹³ is a person or organization acting on behalf of a beneficiary.

The Department of Health and Human Services (MDHHS), as a government agency in accordance with federal Indian law, acts as a trustee for Indian people in Indian Child Welfare cases. The beneficiary for Indian Child Welfare cases can be simultaneously the Indian child, Indian family, and Indian tribe according to their function or situation. Indian Child Welfare cases often involve multiple American Indian beneficiaries based upon Federal-Indian Trust Relationships.

URBAN INDIAN ORGANIZATION

An organization facilitating programming and advocacy for American Indians located in an urban area.

¹⁰ Indian Child Welfare Glossary and Flowchart, National Indian Child Welfare Association (NICWA) at: http://www.nicwa.org/Indian_Child_Welfare_Act/glossary.pdf

¹¹ Michigan Absent Parent Protocol: Identifying, Locating, and Notifying Absent Parents in Child Protective Proceedings at: <http://courts.michigan.gov/scao/resources/standards/APP.pdf>.

¹³ Wikipedia, the free dictionary at: <http://en.wikipedia.org/wiki/Trustee>